IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No.377 of 1998
in
SPECIAL CIVIL APPLICATION No.13682 of 1994

WITH
CIVIL APPLICATION No.7862 of 1998
**

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR.K.G.BALAKRISHNAN
and
MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? YES

2. To be referred to the Reporter or not? YES

3. Whether Their Lordships wish to see the fair copy of the judgement? NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? NO

5. Whether it is to be circulated to the Civil Judge? NO

MOHMAD YUSUF BACHLA DECD. BY HIS HEIRS

Versus

DEPUTY COLLECTOR

Appearance:
MR GR SHAIKH for Appellants
NOTICE SERVED BY DS for Respondent No. 1
MR BG PATEL for Respondent No. 3

CORAM : CHIEF JUSTICE MR.K.G.BALAKRISHNAN and

MR.JUSTICE M.S.SHAH

Date of decision: 23/11/98

C.A.V. JUDGEMENT : (Per M.S. Shah, J.)

This Appeal under clause 15 of the Letters Patent is preferred against the judgment and order dated 27.1.1998 passed by the learned Single Judge dismissing Special Civil Application No.13682 of 1994 arising from the judgment and order dated 12.12.1994 of the Gujarat Revenue Tribunal ("the Tribunal" for brevity) in Revision Application No.TEN- BA 216 of 1989 under the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948 ("the Tenancy Act" for brevity).

2. The facts involved in this dispute are as under :

2.1 By the judgment and order dated 15.11.1977 delivered by the Tribunal in Revision Application No.379/77, it was held that respondent no.3 herein, Mohmad Said Ibrahim Bhatuk was the tenant and therefore, deemed purchaser of the land admeasuring 15 gunthas of survey no.523/1 in village Godhra of Panchmahals District. It was held therein that the land in question was being cultivated by the father of respondent no.3 herein since 1945. After the death of his father, the land was being cultivated by respondent no.3. There was a dispute as to whether the tenancy rights were inherited by respondent no.3 alone or whether his brothers also inherited the same. The orders passed by the Mamlatdar and Agricultural Land Tribunal and the Deputy Collector that the brothers and mother of respondent no.3 were also the tenants and had become deemed purchasers of the land in question along with respondent no.3, were set aside by the Tribunal to the extent that they had held brothers and mother of respondent no.3 as joint tenants and joint deemed purchasers. Against the aforesaid order of the Gujarat Revenue Tribunal, the other brothers filed Special Civil Application No.1864 of 1977. Said petition came to be withdrawn on 16.4.1984, in view of the settlement between the parties. The fact remains that the aforesaid judgment of the Tribunal which ultimately held that respondent no.3 was the tenant and deemed purchaser of the land in question continued to hold the field and the same was not challenged by the appellant herein.

2.2 In the consequential proceedings at the instance of respondent no.3 for fixation of the price of the land and for ancillary orders under the Tenancy Act, the Mamlatdar & ALT passed orders dated 15.7.1987 fixing the price, and held that the question about the tenancy rights of respondent no.3 herein had already become final

in view of the decision of the Tribunal rendered in the year 1977. However, by his order dated 10.2.1989 the Deputy Collector, Godhra, allowed the appeal of the appellant herein and remanded the matter to the Mamlatdar & ALT for considering the question - the property in question being the evacuee property obtained by the appellant from Custodian of evacuee property, whether the provisions of the Tenancy Act were applicable and whether respondent no.3 could be treated as a tenant of the evacuee property or not.

2.3 Against the said order dated 10.2.1989 of the Deputy Collector, respondent no.3 filed Revision Application No.TEN. BA 216 of 1989 before the Tribunal, which held that the question of status of respondent no.3 as the tenant and deemed purchaser in respect of the land in question was already concluded by the Tribunal as far back as on 15.11.1977 and that the same could not be reopened in view of the doctrine of res judicata and the principle of estoppel. The Tribunal, therefore, set aside the order of the Deputy Collector and restored the order of the Mamlatdar & ALT.

2.4 Aggrieved by the aforesaid judgment of the Tribunal, the appellant filed the petition under Articles 226 and 227 of the Constitution of India. After hearing, the learned counsel for the parties, the learned Single Judge dismissed the petition as per his judgment dated 27.1.1998, which is challenged in the present appeal.

3. At the hearing of this appeal Mr.G.R. Shaikh, learned counsel for the appellants contended that in view of the fact that the land in question was evacuee property, the provisions of the Tenancy Act could not apply to the land in dispute. Mr.Shaikh, relied on the decision dated 3.7.1970 of this Court in Special Civil Application 1209 of 1966 for raising the aforesaid contention and also relied on the decision of this Court in Ghanchi Pirbhai Kala (Decd.) through his heirs Adam Pirbhai & others v. Meghamal Sirumal, Rajkot, 1989 (1) GLR 183, and on the decision of the Apex Court in Haji Siddik Haji Umar and others v. Union of India, AIR 1983 SC 259. Finally Mr.Shaikh relied on the decision of this Court in Vibhubhai Jethabhai Rajput v. Rikhavdas Dhulchand Sanghavi, 1997 (3) Gujarat Current Decisions 28 for contending that since the order dated 15.11.1977 of the Tribunal was passed without jurisdiction, it was a nullity and that the plea of nullity could be raised at any stage, at any time and in any proceedings.

4. On the other hand, Mr. A.J. Patel, learned

counsel for respondent no.3 submitted that the judgment dated 15.11.1997 of the Tribunal holding respondent no.3 to be the tenant and deemed purchaser in respect of the land in question was never challenged by the appellant in the last two decades; that the collateral challenge suffers from gross delay, laches and acquiescence.

Without prejudice to the said contention, Mr. Patel, also submitted that the jurisdiction of the Tribunal to decide that respondent no.3 was a tenant and deemed purchaser in respect of the land in question was never ousted as the revenue authorities under the Tenancy Act are the only competent courts to decide the question of tenancy and right of the tenant to purchase the land in question. It was further submitted that all that the civil courts or tenancy courts cannot do is to reexamine the decision of the competent authority declaring a property as evacuee property. In the instant case there was no such dispute.

5. Having heard the learned counsel for the parties at length, we are of the view that there is a considerable substance in the submission made by the learned counsel for respondent no.3, that the appellant having acquiesced in the judgment dated 15.11.1977 of the Tribunal holding respondent no.3 to be the tenant and deemed purchaser in respect of the land in question, the plea raised by the appellant about lack of jurisdiction of the Tribunal suffers from gross delay, latches and acquiescence. In the proceedings before the Mamlatdar & ALT, after declaration made by the Tribunal under sec.32(G) of the Act, the Mamlatdar & ALT was merely required to work out the details of the price and the period within which the price is to be paid by respondent no.3.

6. That requires us to deal with Mr.Shaikh's contention that if an order is nullity, it remains a nullity without any need for any declaration and the plea about its nullity can be raised at any time in any proceedings including collateral proceedings. In our view, the submission overlooks the following important aspects :

In the first place, the Gujarat Revenue Tribunal did have the jurisdiction to adjudicate upon the claim of a person to be declared a tenant and deemed purchaser of a particular land as on 1.4.1957. In the course of that adjudication in the year 1977, it was open to the present appellant to raise the contention that the provisions of the Tenancy Act were not applicable to an evacuee

property. However, the appellant did not raise any such contention on that occasion nor did he challenge the judgment and order dated 15.11.1977 of the Tribunal. The principle of constructive res judicata would, therefore, apply.

Secondly, once the Tribunal had the jurisdiction to decide the question whether the provisions of the Tenancy Act were applicable to a particular land in question, even an erroneous decision in the exercise of such jurisdiction would not render it null and void ab initio.

Thirdly, it has been held by the Apex Court in State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth, Naduvil (dead) and others, (1996) 1 SCC 435, that where an order is passed by an authority or a tribunal, even a void order subsists and remains fully operative until it is set aside by a court of competent jurisdiction. In support of the said principle, the Apex Court has quoted with approval the following authors :

"In Halsbury's Laws of England, 4th Edn., (Re-issue) Vol.1(1) in para 26, p.31, it is stated, thus :

"If an act or decision, or an order or other instrument is invalid, it should, in principle, be null and void for all purposes; and it has been said that there are no degrees of nullity. Even though such an act is wrong and lacking in jurisdiction, however, it subsists and remains fully effective unless and until it is set aside by a court of competent jurisdiction. Until its validity is challenged, its legality is preserved."

In the Judicial Review of Administrative Action, De Smith, Woolf and Jowell, 1995 Edn., at pp.259- 60 the law is stated thus :

"The erosion of the distinction between jurisdictional errors and non jurisdictional errors has, as we have seen, correspondingly eroded the distinction between void and voidable decisions. The courts have become increasingly impatient with the distinction, to the extent that the situation today can be summarised as follows :

(1) All official decisions are presumed to be

valid until set aside or otherwise held to be invalid by a court of competent jurisdiction. .. .."

Similarly, Wade and Forsyth in Administrative Law, Seventh Edn., 1994, have stated the law thus at pp.341- 342 :

".. .. every unlawful administrative act, however invalid, is merely voidable. But this is no more than the truism that in most situations the only way to resist unlawful action is by recourse to the law. In a well known passage Lord Radcliffe said :

"An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders."

"This must be equally true even where the brand of invalidity is plainly visible, for there also the order can effectively be resisted in law only by obtaining the decision of the court. The necessity of recourse to the court has been pointed out repeatedly in the House of Lords and Privy Council without distinction between patent and latent defects."
(emphasis supplied)

7. In view of the aforesaid principle enunciated by the Apex Court, it is clear that it was necessary for the appellant to resort to appropriate proceedings within a reasonable period to challenge the judgment and order dated 15.11.1977 of the Tribunal and to get the said judgment set aside. Since that was not done, the judgment of the Tribunal has remained effective and operative for all purposes all these years and the Tribunal on the second occasion and the learned Single Judge of this Court while dismissing the petition have rightly held that it was not open to the appellant to reagitate the question about the status of respondent no.3 as tenant and deemed purchaser of the land in question, when the judgment and order dated 15.11.1977 of

the Tribunal has never been challenged by the appellant for the last twenty years. In the result, we do not entertain the appellant's collateral challenge to said judgment and order of the Tribunal. It is also pertinent to note that the said judgment and order dated 15.11.1997 is not challenged even in the petition giving rise to the present appeal and that said judgment and order is on record merely as an annexure to the affidavit filed by respondent no.3 in reply to the petition.

8. As far as the reliance placed by the learned counsel on the decision in Vibhubhai Jethabhai Rajput v. Rakhavadas Dhulchand Sanghavi [1997 (3) GCD 28] is concerned, that was a case where the Municipality had purported to have leased out a portion of foot path and a cabin was put up thereon, which was not only found to be violative of clear provisions of the Gujarat Municipalities Act, 1963 and therefore, the purported lease found to be void ab initio, but it was also found that the appellant/ defendant was causing continuous obstruction and nuisance and was, therefore, committing a continuing wrong. Moreover, causing the obstruction on a public street constitutes a criminal offence punishable under sec.185(1) of the Municipalities Act and as per sec.185(4) of the said Act the Chief Officer of the Municipality did not have even any ostensible power to lease a public street or a part thereof for more than a period of ten days. It was in the aforesaid factual backdrop and legal setting that this Court was justified in holding that the suit for mandatory injunction directing the defendant to remove the cabin and make the foot- path open was maintainable and was required to be decreed even after a period of 21 years from the date of grant of the purported lease.

9. In view of the above discussion, we are inclined to dismiss this appeal on the ground that the learned Single Judge was justified in not permitting the appellant to reagitate the question about the status of respondent no.3 as a tenant and deemed purchaser of the land in question in view of the appellant's acquiescence into the judgment dated 15.11.1977 of the Gujarat Revenue Tribunal. We have accordingly not gone into the merits of the appellant's contention about applicability of the provisions of the Tenancy Act to the land in question.

10. The appeal is accordingly dismissed. Notice is discharged. There shall, however, be no order as to costs.

11. In view of the dismissal of the Appeal, Civil Application No.7862 of 1998 does not survive and is disposed of accordingly. Ad interim relief stands vacated.

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